

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

KATHRYN TOWNSEND GRIFFIN, THE ESTATE
OF CERRIGALE TOWNSEND and THE HELEN
CHRISTINE TOWNSEND MCDONALD TRUST

Plaintiffs,

-against-

EDWARD CHRISTOPHER SHEERAN, p/k/a ED
SHEERAN, ATLANTIC RECORDING
CORPORATION, d/b/a ATLANTIC RECORDS,
SONY/ATV MUSIC PUBLISHING, LLC, and
WARNER MUSIC GROUP CORPORATION, d/b/a
ASYLUM RECORDS

Defendants.

ECF CASE

17-cv-5221 (LLS)

**DECLARATION OF DONALD S.
ZAKARIN IN SUPPORT OF
DEFENDANTS' NINTH
MOTION *IN LIMINE***

I, DONALD S. ZAKARIN, declare as follows:

1. I have personal knowledge of, and am fully familiar with, the facts set forth in this Declaration, which I respectfully submit in support of the Ninth Motion *In Limine* filed by Defendants Edward Christopher Sheeran (“Sheeran”), Atlantic Recording Corporation (“Atlantic”) and Sony/ATV Music Publishing LLC (n/k/a Sony Music Publishing (US) LLC) (“SMP,” together with Atlantic and Sheeran, the “Defendants” and each a “Defendant”), which seeks an Order precluding Plaintiffs from offering or attempting to elicit any argument, testimony or “evidence” concerning Sheeran’s concert revenues.

2. Annexed as **Exhibit A** is a copy of Plaintiffs’ Complaint in this Action. (ECF 1). Nowhere in this Complaint do Plaintiffs assert a claim for concert revenues or identify any “causal nexus” between the alleged infringement and concert revenues.

3. Annexed as **Exhibit B** is a true copy of Joint Trial Exhibit 8, a Stipulation entered by the parties and dated October 8, 2020.

4. Joint Trial Exhibits 5-7 represent profit and loss statements for each of the Defendants. Pursuant to Joint Trial Exhibit 8, these Joint Trial Exhibits are admissible for all purposes; there is no dispute that the amount of the gross revenues and expenses in Joint Trial Exhibits 5-7 are true and correct, and that they relate to the United States exploitation of *Thinking Out Loud*. Joint Trial Exhibits 5-7 do not include any concert revenues or expenses.

5. Annexed as **Exhibit C** is this Court's Order dated July 24, 2020 denying Plaintiffs' motion for discovery relating to concert revenue and expenses.

6. On March 7, 2023, one week before the deadline to file Pretrial Orders with the Court, Plaintiffs, for the very first time, added a "Proposed Finding Of Fact" to their portion of the Damages Pretrial Order by which they propose to seek concert revenues, despite the fact that their Complaint does not allege a claim for concert revenues and identifies no causal nexus between the alleged infringement and concert revenues, despite Joint Exhibit 8 and the fact that Joint Exhibits 5 through 7 reflect no concert revenues or expenses and in violation of this Court's July 24, 2020 Order.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Dated: March 15, 2023



DONALD S. ZAKARIN